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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/772,839 | 02/05/2004 | Uwe Werner Ehling | BATG-10 | 6011 |

27868 7590 06/07/2007
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| EXAMINER |
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LOPEZ, CARLOS N

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| ART UNIT | PAPER NUMBER |
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1731

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06/07/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/772,839

Applicant(s)

EHLING ET AL.

Examiner

Carlos Lopez

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 18,19,22,26,27,37,40,41,43-45 and 47-53 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 118-19,22, 26-27,37,40,41,43,44-45,47-53 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date ____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- ☐ Notice of Informal Patent Application
- ☐ Other: ____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 18-19, 22, 26-27, and 37 are rejected under 35 U.S.C. 102(b) as being anticipated by Junemann et al (US. Pat. No. 5,791,353).

Junemann et al discloses all that is recited in the claims (see Fig. 1) since it discloses a pressure-conditioning screw having a pressure-tight cylindrical housing 9 designed to operate at an absolute pressure of 0.5-2.0 bars (corresponding to the claimed "hyperbarically pressurized conditioning chamber"), into which tobacco stem material is introduced via pressure-tight lock 3, and exited from pressure-tight lock 4. Steam nozzles 6 treat the tobacco stems and a feeder screw 2 (corresponding to the claimed "mixing conveyor") conveys the material from entrance to exit along an incline of up to 20 degrees. (See entire document). The claimed feature of having the chamber variable inclined is deemed as the being variable in view of the teaching in Col. 3, lines 35ff noting that the chamber can have an angle of inclination from 5° to 45°, preferably 10°.

Several of the above claims contain "functional" language, i.e. "speed of the conveying screw". Applicant is reminded that where the claimed and prior art apparatus

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is identical or substantially identical in structure or composition, a *prima facie* case of either anticipation or obviousness has been established. *In re Best*, 562 F.2d 1252, 1255, 195 USPQ 430,433 (CCPA 1977). In other words, when the structure recited in the reference is substantially identical to that of the claims, the claimed properties or functions are presumed to be inherent.

As for claim 22, the cellular wheels is deemed as being depicted by figure 1.

As for claim 26, the speed of the conveyor is deemed as adjustable, variable, determined by the driving means that rotates the feeder screw 2.

As for claim 27, the wings of the feeder screw 2 provide cavities allowing in which the material can fall back as it moves to the upper exit of the chamber.

Claims 18-19, 22, 26-27,37,40,41,43,44-45,47-53 are rejected under 35 U.S.C. 102(b) as being anticipated by Jones et al (US 3,612,066). Jones discloses a device for treating tobacco material. The device comprises a chamber 20 operated at superatmospheric pressure (See Co. 4 ,line 1). Within the chamber, a screw conveyor 22 moves tobacco from an entrance side of the to an exit side as shown in figure 1. The claimed first and second pressure differential sluice are deemed as star valves 16 and 28 that prevent pressure release from the chamber. As for the claimed pitch the figure 1 of Jones show the conveyor screw inclined towards the entrance of the tobacco, hence the pitch increases in the exit direction. As for the claimed limitation that the chamber may be variably inclined, said limitation is deemed as an intended use limitation capable of being performed by Jones chamber.

As for claim 18-19, the material being worked on by the apparatus does not provide a structural distinct feature from that of Jones.

As for claim 26, the speed of the conveyor is deemed as adjustable, variable, determined by the driving means motor (m) that rotates the feeder screw 2 as shown in figure 1.

As for claims 27 and 45, the wings of the feeder screw provide cavities allowing in which the material can fall back as it moves to the upper exit of the chamber.

As for claims 40 and 48, the claimed show is deemed as the feeding means of pipe 10 that is in flow communication with steam leakage channel 18a as shown in 1.

As for claim 41, the discharge shoe is deemed as conduit 26 that is in flow communication with expander 34 deemed as the claimed hood.

As for claim 43, the claimed conveyance is deemed as the fan 68 providing conveyance to the material from exit shoe 26.

As for claim 44, see the above noted feature of Jones.

As for claim 47, see above noted bell valve.

As for claim 49, the claimed nozzles are deemed as the conduit feeding material to the chamber and the conduit feeding heating fluid as shown in figure 1.

As for claims 50 and 53, see above noted features.

As for claims 51 and 52 the claimed temperature adjustment mechanism is deemed as the heating fluid provided at the entrance side of the chamber shown in figure 1.

Response to Arguments

Applicant's arguments filed 4/6/07 have been fully considered but they are not persuasive. Applicant's arguments are drawn to the functional features of the claimed device. However, the claims are drawn to device, hence patentability is based on structural features recited in the claim and not process functions noted in the specification.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carlos Lopez whose telephone number is 571.272.1193. The examiner can normally be reached on Mon.-Fri. 8am - 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steven Griffin can be reached on 571.272.1189. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

